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**IN THE
COURT OF APPEALS OF INDIANA**

JACSEAN P. THOMAS.

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A04-0804-CR-344

APPEAL FROM THE ALLEN SUPERIOR COURT

The Honorable Frances C. Gull, Judge

Cause No. 02D04-0711-FD-925

December 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jacsean Thomas appeals his sentence following his convictions for three counts of Intimidation, as Class D felonies, pursuant to a plea agreement. He presents two issues for our review:

1. Whether the trial court abused its discretion when it sentenced him.
2. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

In July 2007, Thomas broke into L.B.'s house and battered her. L.B. was formerly Thomas' girlfriend, and they have children together. The State filed criminal charges as a result of that incident, and, while Thomas was in jail, he made threatening phone calls and wrote threatening letters to L.B. Thomas threatened to kill L.B. and their children if she testified against him. In particular, Thomas stated:

I will hunt you down like a mother-f***ing animal. Nobody, nothing or God himself can stop me from getting at you. I will find you. I know your whole name, your social security number and that's all it takes to put into the internet. You know that sh*t because they can't hold me forever. I'll eat, sleep and sh*t thinking about ways to take you off this earth and the way the kids will lose both parents instead of just losing one. . . . If you testify against me I'm going to kill everybody that's in that household including the kids.

Sentencing Transcript at 10-12.

The State charged Thomas with three counts of intimidation, as Class D felonies, and three counts of invasion of privacy, Class A misdemeanors. In exchange for Thomas' guilty plea on the three intimidation charges, the State agreed to dismiss the

invasion of privacy charges. The plea agreement provided that Thomas' sentence on each count would be capped at two years and that the sentences would run consecutively. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Thomas first contends that the trial court abused its discretion in sentencing him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. (quotation omitted).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91.

Here, the trial court identified the following aggravators: Thomas' extensive criminal history and failed efforts at rehabilitation. And the court identified the following mitigators: his guilty plea; his acceptance of responsibility; and his efforts at rehabilitation while in jail. The trial court found that the aggravators outweighed the

mitigators and imposed one and one-half year sentences for the first two intimidation convictions and a two-year sentence for the third intimidation conviction, all Class D felonies. And, pursuant to the plea agreement, the trial court ordered that the sentences would run consecutively.

Thomas' sole contention on appeal is that "there has not been a sufficient explanation as to what specific aggravating factors were being considered by the Court and how those factors influenced the sentence and necessitated an increased sentence on Count III above the advisory sentence." Brief of Appellant at 7. To the contrary, however, we hold that the trial court's sentencing statement is specific regarding the aggravators and mitigators identified by the court. Indeed, the trial court engaged in a detailed review of Thomas' criminal history and failed attempts at rehabilitation before finding that the aggravators outweighed the mitigators. And the record supports the trial court's sentencing statement. See Anglemeyer, 868 N.E.2d at 490-91. Thomas has not demonstrated that the trial court abused its discretion when it sentenced him.

Issue Two: Inappropriateness of Sentence

Thomas also contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant

to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration in original).

Thomas’ sentence is not inappropriate in light of the offenses. As the excerpt above demonstrates, Thomas’ threats were extreme and were clearly designed to terrify L.B. Indeed, Thomas does not try to minimize the severity of the offenses on appeal. With respect to his character, Thomas admits to his “persistent history of criminal convictions.” Brief of Appellant at 9. But he insists that the trial court should have given more mitigating weight to his remorse, acceptance of responsibility, and current efforts at rehabilitation. Brief of Appellant at 9. However, “the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence.” Anglemyer, 868 N.E.2d at 491. Thus, any weight given to aggravators and mitigators is not subject to appellate review. See id.

As the trial court observed, Thomas’ criminal history dates to 1996 and includes three felony convictions and eight misdemeanor convictions. The trial court imposed the advisory sentence of one and one-half years for two of Thomas’ convictions, and imposed a two-year sentence for the third conviction. Pursuant to Thomas’ plea

agreement, the trial court ordered that the sentences would run consecutively. Thomas has not demonstrated that his sentence is inappropriate in light of the nature of the offenses and his character.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.